PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP 03/12030	International filing date *(day/month/year)* 29.10.2003	Priority date *(day/month/year)* 20.12.2002
International Patent Classification (IPC) or both national classification and IPC A23L1/305		
Applicant UNILEVER N.V. et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

   ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

   These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

   - I ☒ Basis of the opinion
   - II ☐ Priority
   - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
   - IV ☐ Lack of unity of invention
   - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
   - VI ☐ Certain documents cited
   - VII ☐ Certain defects in the international application
   - VIII ☐ Certain observations on the international application

Date of submission of the demand	Date of completion of this report
10.04.2004	04.02.2005
Name and mailing address of the international preliminary examining authority: European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Lepretre, F Telephone No. +31 70 340-2994

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. PCT/EP 03/12030

I. Basis of the report

1. With regard to the **elements** of the international application *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17))*:

Description, Pages

1-35 as originally filed

Claims, Numbers

1-13 as originally filed

Drawings, Sheets

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

   These elements were available or furnished to this Authority in the following language: , which is:

   ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).

   ☐ the language of publication of the international application (under Rule 48.3(b)).

   ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

   ☐ contained in the international application in written form.

   ☐ filed together with the international application in computer readable form.

   ☐ furnished subsequently to this Authority in written form.

   ☐ furnished subsequently to this Authority in computer readable form.

   ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

   ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

   ☐ the description, pages:

   ☐ the claims, Nos.:

   ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

   (Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

   ☐ the entire international application,

   ☒ claims Nos. 8-13

   because:

   ☒ the said international application, or the said claims Nos. 8-13 relate to the following subject matter which does not require an international preliminary examination (specify):

   see separate sheet

   ☐ the description, claims or drawings *(indicate particular elements below)* or said claims Nos. are so unclear that no meaningful opinion could be formed *(specify)*:

   ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

   ☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

   ☐ the written form has not been furnished or does not comply with the Standard.

   ☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	
	No:	Claims	1-7
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-7
Industrial applicability (IA)	Yes:	Claims	1-7
	No:	Claims	

2. Citations and explanations

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

For the assessment of the present claims 8-13 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment. Therefore, no examination under Article 33(1) PCT i.e. novelty, inventive step and industrial applicability will be carried out for claims 8-13.

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: WO 01/37850 A (GREMLICH SANDRINE ;NEESER JEAN RICHARD (CH); NESTLE SA (CH); MACE) 31 May 2001 (2001-05-31)
D2: US 2002/037830 A1 (BERTHELSEN JORN HAVSKOV ET AL) 28 March 2002 (2002-03-28)
D3: EP-A-1 112 693 (QUEST INT) 4 July 2001 (2001-07-04)

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-7 is not new in the sense of Article 33(2) PCT.

The document D1 discloses the use of a milk protein hydrolysate or compound

including a milk protein hydrolysate, which is capable of inducing release of GLP-I, in a bioavailable form in the manufacture of a composition for the treatment or prevention of diabetes or syndrome X..
According to claims 5 and 6, the milk protein hydrolysate is sweet whey or acid whey. The whey protein hydrolysate is used in various food compositions (see examples).
D1 hence destroys novelty of claim 1.

The document D2 describes the use of a protein hydrolysate (paragraph [0024] whey protein hydrolysate (solution C) and claim 14) having a degree of hydrolysis (DH) of 1-50 as an additive to an energy supplementation or metabolic nutrient to increase the glycogen level for a person in need of increased glycogen level (see claims and experiments).
D2 hence destroys novelty of claim 1.

The document D3 describes compositions that can be taken orally and that stimulates the plasma insulin response (see paragraph [0003]. "Taken after exercise the resulting enhanced insulin response highly stimulates muscle glycogen synthesis and thus recovery. Furthermore, protein anabolism in skeletal muscles is stimulated. Taken during exercise an enhanced uptake of glucose by the muscles would occur".
The compositions comprise a protein hydrolysate that can be whey protein hydrolysate (see paragraph [0014] and table 1 (test drink 3).
D3 hence destroys novelty of claim 1.

Dependent claims 2-7 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step.
The features of claims 2-7 are either known from D1-D3 or merely one of several straightforward possibilities from which the skilled person would select, in accordance with circumstances, without the exercise of inventive skill, in order to solve the problem posed.